

FIRST APPEAL No 929 of 1999

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereundeJJJJ : NO

[illegible]

5. Whether it is to be circulated to the Civil Judge? : NO  
1 to 5 No

YAKUBBHAI NOORMOHAMED ALLABAX

Versus

RAMJUBHAI ALLABAX DECD THRO HEIRS

Appearance:

MR JV MEHTA for Petitioner

MR CG MEHTA for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 27/11/2000

ORAL JUDGEMENT

Admit.

Heard learned advocate Shri J.V. Mehta appearing for the appellant and learned advocates Shri C.G. Mehta and Ms. J.C. Bhatt for the respondents.

It has been submitted by the learned advocates that the parties to the litigation have amicably resolved their dispute and they have signed the compromise deed on 27.11.2000. The said compromise deed is taken on record.

The facts, in a nutshell, giving rise to the present first appeal are as under:

The plaintiff had filed Civil Suit No. 3850/73 in the City Civil Court at Ahmedabad against the present respondents praying that the property described in para 13 of the plaint be partitioned. A preliminary decree was passed on 29th Dec. 78, but it appears that there was some dispute with regard to land admeasuring 5 sq.yds. According to the plaintiff, he ought to have received the land in dispute which admeasures 5 sq.yds. After considering the evidence, the trial court came to the conclusion that it was not possible to demarcate the land which the plaintiff is legally entitled to and, therefore, the defendants were directed to pay Rs. 32,704/- to the appellant-plaintiff. Accordingly, the suit amount was also deposited and the said amount is lying with the trial court. Thus, the suit has been decreed in above terms.

Now, the parties to the litigation have settled the matter amicably whereby the original defendants have agreed to part with 5 sq.yds. of land which has been described in the compromise deed as well as in the sketch annexed to the said compromise deed. In view of the fact that the defendants are ready and willing to part with the said land, it would not be necessary for them to give the decretal amount to the appellant.

In the circumstances, the judgment and decree dated 13.9.93 passed by the trial court is set aside and a decree in terms of the compromise deed dated 27.11.2000 is ordered to be passed. The defendants are permitted to withdraw the amount deposited by them with the trial court.

The appeal is finally disposed of as allowed with no order as to costs.

(A.R. Dave, J.)

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